

STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE B20 NORTH FRENCH STREET, 11TH FLOOR WILMINGTON, DELAWARE 19801

CHMAN A BARRON CHIEF MAGISTRATE

TELEPHONE: (302) 571-2485

LEGAL MEMORANDUM 82-84

TO:

ALL JUSTICES OF THE PEACE

STATE OF DELAWARE

FPOM:

NORMAN A. BARRON

CHIEF MAGISTRATE

DATE: FEBRUARY 25, 1982

RE:

A DEFENDANT'S RIGHT TO TRIAL BY JURY

The Sixth Amendment to the United States Constitution states, in pertinent part, as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . "

To the same effect, Delaware's Constitution of 1897, at Article I, Section 7, states, in pertinent part, that:

> "In all criminal prosecutions, the accused hath a right to . . . a speedy and public trial by an impartial jury

Suppose John Doe appears before you charged with violating Section 5(a) of Article 1 of the Town Ordinances of the Town of Frederica, Delaware. Said section states as follows:

The Sixth Amendment's right to jury trial provisions are applicable to the States by virtue of the Fourteenth Amendment. Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed. 491 (1968).

"SECTION 5. Keeping livestock in Town; animals running at large.

(a) No person shall keep any horses, cattle, sheep, hogs or other livestock in the Town of Frederica, except persons regularly engaged in the practice of farming."

Prior to trial, John Doe demands a trial by jury, citing the Sixth Amendment to the United States Constitution and/or Article I, Section 7 of the Delaware Constitution of 1897. What ruling would you make with respect to such a demand?

As Justices of the Peace, you should know that while the right to a jury trial is constitutionally recognized, the right is not absolute. Stated otherwise, the right to trial by jury does not attach to all defendants wherever they may fall within the broad spectrum of alleged criminal conduct. The protective penumbra of the right to a jury trial was as stated by the Honorable Clarence W Taylor, Associate Judge of the Superior Court, in the case of State v. Hollinger, Del.Super., 337 A.2d 326 (1975):

"In <u>Duncan v. Louisiana</u>, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968), the United States Supreme Court held that the . right to jury trial for serious offenses is a fundamental right applicable to prosecutions within the states as within the federal government. Duncan recognized that the right to jury trial does not extend to the category of petty crimes and offenses. The Court held that the authorized penalty for a particular crime is a major determinant in casting a crime as serious or petty and that if the penalty which may be imposed is severe enough, this alone may constitute the crime as serious, entitling a derendant to jury trial. In Duncan, while the Court gave some favorable attention to drawing the line between petty and serious at six-months

possible imprisonment, the Court there limited its holding to a determination that a possible two-year imprisonment signifies a serious crime, entitling the defendant to jury trial.

In Baldwin v. New York, 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970), the United States Supreme Court rejected named distinctions such as the distinction between misdemeanors and felonies as establishing the proper line between petty and serious crimes and held that wherever the possible penalty exceed six-months imprisonment, the crime must be classified as serious for purposes of trial by jury.

... In <u>Bloom v. Illinois</u>, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968), the United States Supreme Court held that where a maximum penalty was not specified, the Court would look to the actual penalty imposed to determine whether the offense fell into the serious category." (Emphasis added.)

The Delaware Supreme Court had an opportunity to apply the above-mentioned United States Supreme Court principles in the case of Clements v. Family Court, Del.Supr., 401 A.2d 72 (1979). There, the defendant was charged by an information filed in Family Court with the crime of Sexual assault in violation of 11 Del.C., §761. Family Court had, by virtue of 10 Del.C., §922, exclusive original jurisdiction to hear said charge. Sexual assault is a class A misdemeanor. 11 Del.C., §761. A court may impose up to 2 years incarceration upon one convicted of a class A misdemeanor. 11 Del.C., §4206(a). The crime of Sexual assault is, therefore, a serious crime. Duncan v. Louisiana, supra; Baldwin v. New York, supra. Yet, prosecutions in

the Family Court are had without trial by jury. 10 <u>Del.C.</u>, §940(a). In the Family Court, the defendant demanded a jury trial. This motion was denied. Upon appeal, the Supreme Court held that:

"Because the defendant may take a timely appeal from a criminal conviction in the Family Court to the Superior Court, where a jury trial de novo is available, we are of the opinion that this provides a two-tier system which meets constitutional muster under Ludwig v. Massachusetts, 427 U.S. 618, 96 S.Ct. 2781, 49 L.Ed.2d 732 (1976) and that the statutorily granted exclusive jurisdiction in the Family Court is unaffected."

The Honorable John J. McNeilly, speaking for the Court, explained:

"The Family Court Act of 1971 was enacted by the General Assembly and created a statewide court of record with civil and criminal jurisdiction over family and child matters under legislative mandate that:

'The Court shall endeavor to provide for each person coming under its jurisdiction such control, care, and treatment as will best serve the interests of the public, the family, and the offender, to the end that the home will, if possible remain unbroken and the family members will recognize and discharge their legal and moral responsibilities to the public and to one another. This Chapter shall be liberally construed that these purposes may be realized.' 10 Del.C., §902.

By 10 Del.C., §922 the General Assembly provided that the Family Court have exclusive original criminal jurisdiction in [several] enumerated proceedings among which appears the offense of sexual assault under which the defendant here stands charged.

It is conceded that under <u>Baldwin v. New York</u>, 399 U.S. 66, 90 S.Ct. 1886, 26 L.Ed.2d 437 (1970) and <u>Thomas v. State</u>, Del.Supr., 331 A.2d 147 (1975), the defendant has a right to trial by jury.

In Baldwin the Court stated:

'In <u>Duncan v. Louisiana</u>, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968), we held that the Sixth Amendment, as applied to the States through the Fourteenth, requires that defendants accused of serious crimes be afforded the right to trial by jury. We also reaffirmed the long-established view that so-called 'petty offenses' may be tried without a jury. Thus the task before us . . . is . . . one . . . of determining the line between 'petty' and 'serious' for purposes of the Sixth Amendment right to jury trial.'

* * * * *

i... [W]e have concluded that no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized.' 90 S.Ct. at 1887-8.

In cases where no maximum sentence is established by statute, the punishment actually imposed, rather than that which could have been imposed, determines the seriousness of the offense in determining the right to jury trial. Thomas v. State, supra.

Counsel have briefed and argued that the 'two-tier' system of this State cannot pass constitutional muster under Ludwig v. Massachusetts, supra, because appeals from the Family Court to the Superior Court are impeded by the

threshold provisions of Article IV, Section 28 of the Delaware Constitution which provide for a defendant's right of appeal only if the sentence imposed exceeds one month imprisonment or a fine of \$100. . . .

The right to a jury trial de novo on appeal depends upon whether the case falls within the 'serious' or 'petty' offense category.

The right to trial by jury is inviolable and attaches at the time a defendant is charged with a 'serious' crime, or sentenced to more than x months implisonment, any state constitutional or statutory provisions related to the right to appeal or otherwise notwithstanding. Accordingly, we hold that the constitutional right to trial by jury overrides the appeal limitations of Del.Const., Art. IV, §28 in an appropriate case.

The crucial question we must answer in this case is whether the defendant must be permitted to exercise his right to trial by jury in the first instance or must be first be tried and convicted in the Family Court before he may exercise his right to a trial de novo before a jury upon appeal. We are satisfied that the latter is the better course from the point of view of the defendant as well as the State. To permit a defendant a trial by court in the Family Court, followed by a trial de novo before a jury upon conviction may appear to fly in the face of judicial economy and the desirability of the one trial one appeal concept. It also places time and cost burdent upon the defendant, the possibility of a more severe sentence upon conviction after a trial de novo, and the psychological and physical side effects upon a defendant caused by the delay of a trial

The appeal limitations of Del.Const., Art. IV, §28 do not apply to traffic cases, 21 Del.C., §708, or to county or municipal code/ordinance violations, 11 Del.C., §5917(b).

de novo. But on balance, we are satisfied that the burdens are less than the benefits derived by the defendant from an expeditious and normally more private disposition of the case in the Family Court following the dictates of 10 Del.C., §902, the utilization of the first trial as a discovery tool, and, in the case of indigent defendants, representation by appointed counsel throughout. At the same time, the Family Court does not become a 'jury court', with the attendant additional costs of operation and violation of the fundamental characteristics of that Court." (Emphasis added.)

It is transparent that in ruling upon John Doe's jury trial demand, you would first determine whether the crime of keeping a horse in the Town of Frederica, in violation of Article 1, Section 5(a) of the Town Ordinances of the Town of Frederica, is a serious or petty offense. The penalty provisions for violating Section 5(a) are found in Section 5(c) of Article 1 which states as follows:

"(c) Any person found guilty of a violation of this section shall be fined not less than Five nor more than Ten Dollars, to be recovered with costs as here inbefore (sic) provided."3

It is clear that no term of incarceration may be imposed upon one found guilty of violating Section 5(a). The maximum sanction is a fine of ten dollars plus costs. It follows, a fortiori, that Section 5(a) denominates a petty offense to which the right to jury trial does not attach. Duncan v. Louisiana, supra; Baldwin v. New York, supra.

³Even if the penalty provisions called for a maximum of a year's incarceration, Justices of the Peace are statutorily precluded from imposing more than a \$100 fine with regard to County and Municipal Code/Ordinance violations by virtue of 11 Del.C., §5917(a). Thus, all such violations are petty offenses. Baldwin v. New York, supra.

Even assuming, arguendo, that keeping a horse in the Town of Frederica in violation of Section 5(a) constitutes a serious crime giving one charged therewith a right to a trial by jury, Delaware's statutory scheme does no violence to said right.

Eleven Del.C., §5917 states as follows:

- "§5917. Jurisdiction over violations of ordinances, codes and regulations of the governments of the several counties and municipalities; penalty; appeal.
- (a) Justices of the peace shall have jurisdiction throughout the State to hear, try and finally determine any violation or violations of any ordinance, code or regulation of the governments of their respective counties and municipalities. Any person convicted of such violations may be fined not more than \$100 for each violation.
- (b) Every person convicted under this section shall have the right of appeal to the Superior Court of this State. No such conviction or sentence shall be stayed pending appeal unless the person convicted shall give bond in an amount and with surety to be fixed by the justice of the peace before whom such person was convicted, at the time such appeal was taken. Such appeal shall be taken and bond given within 5 days from the time of conviction.
- (c) The provisions of §5303 of this title shall not be applicable to violations under this section."

The accused, in all criminal cases where a justice of the peace in the county where the charge is brought has jurisdiction and power to hear and finally determine the matter, may elect at any time prior to day of trial to have the case tried by the Court [of Common Pleas]."

Eleven Del.C., §5303 states as follows:

"§5303. Election by accused to have case tried by Court when proceedings brought before justices of the peace.

Under §5917, the Courts of the Justices of the Peace have jurisdiction to hear violations of town ordinances without giving to those accused of said violations a right to elect trial in the Court of Common Pleas. 11 Del.C., §5917(a) and (c). However, by 1.1 Del.C., §5917(b), anyone convicted after trial of violating such a town ordinance has the right to appeal to the Superior Court for a trial de novo. Thus, assuming the alleged violation of Section 5(a) is denominated a serious crime, which, as we have seen it is not, the case would then stand on the same footing as the case of Clements v. Family Court, supra, where the denial of a jury trial in the Family Court was upheld on appeal since, upon conviction, the defendant was entitled to appeal his case to the Superior Court for a trial de novo where a trial by jury was available.

For the reasons above-stated, John Doe's demand for a jury trial should be denied.

Now suppose John Doe was charged with Issuing a bad check in violation of 11 <u>Del.C.</u>, §900, a class A misdemeanor and, therefore, a serious crime since a two (2) year period of imprisonment may follow a conviction thereunder. 11 Del.C., §4206(a).

^{4 (}continued)

Note that an election to be tried in the Court of Common Pleas where the right to elect exists is made on the date scheduled for trial in a Justice of the Peace Court, said election comes too late, unless, of course, the date of the defendant's initial appearance and date of trial coincide, in which case the opportunity to elect must be given. In other words, if the jurisdiction of the Justice of the Peace Court has not been granted by the defendant's consent to be tried therein where consent is required, then such consent must be given before the Court may try the issue.

Justices of the Peace have jurisdiction to hear, try and finally determine alleged violations of Section 900. 11 Del.C., §2702(16). But before jurisdiction attaches, the defendant must opt to be tried in a Justice of the Peace Court. In other words, the Court, before assuming jurisdiction, must have granted to the defendant his right to elect to be tried in the Court of Common Pleas pursuant to 11 Del.C., §5303, and said defendant must have specifically indicated his election not to be tried in that Court. Prior to the day of trial in the Justice of the Peace Court, the defendant demands trial by jury. How would you rule upon such a demand?

I conclude that a demand for jury trial should be interpreted as an election to be tried in the Court of Common Pleas in any case where a defendant has a right of election whether or not the crime of which the defendant is charged with having committing is a "serious" offense as that term has been defined earlier in this Legal Memorandum. Remember, 11 Del.C., §5303 states, in pertinent part, that:

"The accused . . . may elect at any time prior to day of trial to have the case tried by the Court [of Common Pleas]." (Emphasis added.)

Thus, a defendant who makes an election not to be tried in the Court of Common Pleas, even when knowingly and intelligently made, may at any time prior to the day of trial in the Justice of the Peace Court change his mind and opt to be tried in the Court of Common Pleas notwithstanding his prior execution of the Justice of

⁵See Shoemaker v. State, Del.Supr., 375 A.2d 431 (1977).

the Peace Jurisdictional Form, Criminal Form No. 34, Rev. 8/80. A defendant who is charged with having committed a class A misdemeanor over which the Courts of the Justices of the Peace have jurisdiction to hear, try and finally determine and who elects not to be tried in the Court of Common Pleas but who, in Justice of the Peace Court, demands trial by jury prior to the day of trial should be deemed to have withdrawn his consent to be tried in Justice of the Peace Court. A jury trial is always available to those defendants whose criminal cases are processed in the Court of Common Pleas. 6

Finally, suppose John Doe was charged with violating 11 <u>Del.C.</u>, §1301, Disorderly conduct, a class B misdemeanor. The maximum term of imprisonment with regard to a class B misdemeanor may not exceed six (6) months. 11 <u>Del.C.</u>, §4206(b). Under <u>Baldwin v. New York</u>, <u>supra and State v. Hollinger</u>, <u>supra</u>, Disorderly conduct is a petty offense since the possible penalty does not exceed six (6) months imprisonment. The Courts of the Justices of the Peace have jurisdiction to hear, try and finally determine a case wherein a defendant is charged with having committed Disorderly conduct. 11 <u>Del.C.</u>, §2702(22). The defendant, John Doe, elects not to be tried in the Court of Common Pleas and, instead, consents to be tried in a Justice of the Peace Court. 11 Del.C., §5303. Prior to the day of trial,

The Court of Common Pleas holds jury trials in Kent and Sussex Counties In New Castle County, the Court of Common Pleas does not hold jury trials. However, any criminal defendant who wishes a trial by jury will have his case transferred from the New Castle County Court of Common Pleas to the Superior Court where trial by jury is available. See: 11 Del.C., §5301(a).

he demands that the Justice of the Peace grant him a trial by jury. What decision should you reach in such a case?

I suggest that the demand should be treated as an election to be tried in the Court of Common Pleas even though Disorderly conduct is not a serious offense since, although the constitutional right to a trial by jury does not attach to a defendant charged with a petty cffense, 11 Del.C., §5301(a) grants, by statute, a defendant, charged with any crime over which the Court of Common Pleas has original or concurrent jurisdiction, 7 a right to a jury trial. Eleven Del.C., §5301(a) states, in pertinent part, as follows:

"(a) The accused shall have the right to trial by petit jury in all criminal cases except as otherwise provided by statute.

Eleven <u>Del.C.</u>, §5301 falls with Chapter 53 of Title 11, entitled "Court of Common Pleas". Thus, in any case where the Court of Common Pleas has original or concurrent jurisdiction over a criminal offense, the defendant has a statutory right to a trial by jury by virtue of 11 <u>Del.C.</u>, §5301(a), whether the offense be petty or serious. At the same time, because defendants who are charged with County and Municipal Code/Ordinance violations are not

⁷ See 11 Del.C., §2701(b) which sets forth the Court of Common Pleas' criminal jurisdiction.

EIt is my understanding that legislation may be introduced during the present session of the General Assembly which would limit a defendant's right to a jury trial so as to conform with the holding of Baldwin v. New York, supra.

afforded a right to elect to be tried in the Court of Common Pleas, and because such violations are petty offenses, they are treated differently from those offenses where the right of election exists, that is, those offenses which fall within the Court of Common Pleas original or concurrent jurisdiction.

NAB:pn

CC: The Honorable Daniel L. Herrmann
The Honorable William Marvel
The Honorable Albert J. Stiftel
The Honorable Robert H. Wahl
The Honorable Robert D. Thompson
The Honorable Alfred Fraczkowski
The Honorable Richard S. Gebelein
The Honorable Lawrence N. Sullivan
The Honorable Richard J. McMahon, State Prosecutor
Bruce M. Stargatt, Esquire, Pres., Delaware State Bar Assoc.
Professor William J. Conner, Delaware Law School
John R. Fisher, Director, Administrative Office of the Courts
Law Libraries: New Castle, Kent and Sussex Counties
Files

⁹Eleven <u>Del.C.</u>, §5917(a).

¹⁰ Eleven <u>Del.C.</u>, §5917(a).